

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:10CR327 JCH
)
 (FRB)
LAWRENCE MICHAEL BREESE,)
)
Defendant.)

MEMORANDUM AND ORDER

All pretrial motions in the above cause were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b). A hearing was held on July 27, 2010, on motions filed by defendant Lawrence Michael Breese.

1. Defendant Breese's Motion For Disclosure Pursuant To Rules 404(b) And 609 Of The Federal Rules of Evidence
(Docket No. 46)

The government shall provide notice to the defendant, at least seven days prior to trial of the case, if it intends to offer evidence of other crimes, wrongs or acts, pursuant to Rule 404(b), Federal Rules of Evidence, and if it does so intend, the general nature of any such evidence that it intends to offer at trial.

Rule 609, Federal Rules Of Evidence, sets out the circumstances under which the testimony of a witness who has been convicted of a crime may be impeached by evidence of such conviction. However, the rule does not set out that the government is required to provide evidence of such conviction as to any witness it intends to call at trial. Thus, Rule 609 does not

provide for discovery of such evidence, other than as it relates to the defendant himself, (See Rule 16(a)(1)(D), Federal Rules of Criminal Procedure), and the defendant's request for disclosure pursuant to Rule 609 should be denied.

Therefore, the defendant's motion should be granted in part and denied in part, as set out above.

2. Defendant Breese's Motion For Disclosure Of Favorable, Exculpatory, And Impeaching Information (Docket No. 48)

The government shall provide to the defendant any evidence in its possession which is favorable to the defendant and which is material to the guilt or innocence of the defendant or to punishment. Brady v. Maryland, 373 U.S. 83 (1963). This includes evidence which may be used to impeach the testimony of government witnesses. United States v. Bagley, 473 U.S. 667 (1985).

The government shall provide to the defendant the following material or information, if any exists, as to any person who it calls as a witness at the trial of this case:

1. The prior criminal history of convictions of the witness;
2. Any consideration offered or given to the witness in exchange for his/her testimony and/or cooperation in the investigation of the case;
3. Any statement of the witness which relates to the subject matter about which he/she is to testify (Jencks Act Material).

To the extent that the defendant's motion requests disclosure of such evidence, it should be granted. In all other respects, it should be denied.

Conclusion

For the reasons set out above,

IT IS HEREBY ORDERED that Defendant Breese's Motion For Disclosure Pursuant To Rules 404(b) And 609 Of The Federal Rules Of Evidence (Docket No. 46) is granted in part and denied in part.

IT IS FURTHER ORDERED that defendant Breese's Motion For Disclosure Of Favorable, Exculpatory, And Impeaching Information (Docket No. 48) is granted in part and denied in part.



UNITED STATES MAGISTRATE JUDGE

Dated this 5th day of August, 2010.